

## **REMARKS**

Claims 1-19 are pending in the application. Claims 1-11 and 13-19 stand currently rejected. Claim 20 is new and finds support in original claim 12. Thus, with entry of this Amendment, claims 1-20 will be pending for consideration. No new matter is added with the amendment or new claims.

### ***I. Claim Objections***

Claims 14 and 15 are objected to because of the following informalities: Claim 14 is missing a statement indicating what claim it is dependent from and claim 15 states that it is dependent upon claim 7, which has no recitation regarding a "bar". The Examiner assumes that both of these claims should be dependent upon claim 13, and for examination purposes will be treated as such. In response, applicants acknowledge that the Examiner is correct and have made the appropriate correction.

### ***II. Claim Rejections - 35 USC § 102***

Claims 1-4 and 6-10 stand rejected under 35 U.S.C. 102(a) as being anticipated by Gambino, US 2002/0039612A1.

According to the Examiner, Gambino discloses a fruit filling as in claims 1 and 3, that contains fruit puree and wheat gluten and additional ingredients such as water, citric acid, and calcium citrate (see page 3, 0023, 0028, 0035, 0036). The Examiner further states that Gambino discloses that the filling comprises crushed fruit, pectin and a sugar as in claim 2, wherein the sugar can be sucrose or fructose as in claim 4 (page 3, 0023, 0029 and 0022); that Gambino discloses that the fruit can be apple as in claim 6 (page 2, 0020); that Gambino discloses that the gluten is present in the filling from 0-10% as in claims 8-10 (page 3, Table 1, and 0036); and that Gambino discloses as in claim 7 that water is present from 0-40%, sugar from 35-80%, fruit from 0.5-50%, pectin from 0-4%, citric acid from 0-2%, salt from 0-2%, salt from 0-2% and calcium citrate from 0-5% (page 3, Table 1). The Examiner admits that Gambino does not disclose that sodium citrate or phosphate is used, meeting

the instantly claimed limitation of 0% of each of these ingredients. Applicants respectfully traverse this rejection as it may apply to the amended claims.

Gambino is not a proper reference under 35 USC § 102 because the Examiner has selectively chosen elements from this reference to arrive at the invention. That is, Gambino provides a laundry list of fillings for a frozen waffle product. One of the fillings listed is "fruit based". However, Gambino does not teach or suggest incorporating wheat gluten into a fruit puree, although wheat gluten is mentioned along with many other forms of proteins. As such, the Examiner has arrived at the invention by selectively reading Gambino, which cannot support a rejection under 35 USC § 102. Withdrawal thereof is therefore respectfully requested.

In further response, applicants have clarified the invention with the above amendment. Unlike the filling of the frozen waffles of Gambino, the fruit mixture of the present invention retains a shape outside a casing and at room temperature. Gambino nowhere teaches a product that has the properties recited in the amended claims. In view of this distinction, applicants respectfully request withdrawal of this rejection.

### **III. Claim Rejections - 35 USC § 103**

Claims 5 and 11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Gambino as applied to claims 1-4 and 6-10 and further in view of Yamaguchi, (6,251,651).

The Examiner asserts that Gambino discloses all of the features of the instantly claimed invention except for the use of deamidated wheat gluten as in claims 5 and 11. Yamaguchi taught deamidated wheat gluten that is more suitable for use in food products than nondeamidated wheat gluten (col. 11, lines 36-48).

The Examiner concludes that it would have been obvious to one of ordinary skill in the art at the time of the invention to have used a deamidated wheat gluten as taught by Yamaguchi in the invention as disclosed by Gambino since both are directed to using wheat gluten in food applications and since Yamaguchi taught that deamidated wheat gluten is more soluble and dispersible as well as being more pH stable, especially more useful in foods with acidic pH's (col. 11, lines 36-48).

The Examiner rejects claims 13-19 under 35 U.S.C. 103(a) as being unpatentable over "Bar Talk" by Lisa Kobs (Kobs) in view of Gambino.

According to the Examiner, Kobs disclosed a bar with a confectionery layer and a fruit filling. Kobs disclosed different types or variations of bars and disclosed options for bars including: wherein said confectionery layer can include peanut flour or a high protein dough, enrobing the bar with chocolate, that the bar can be a nutritional bar, and wherein the bar has vitamins and minerals added to it. The Examiner admits that Kobs does not disclose that the fruit filling comprises fruit puree and wheat gluten. However, the Examiner states that Gambino discloses a fruit filling that comprises fruit puree and wheat gluten (page 3, 0023,0028, 0035 and 0036) and concludes that it would have been obvious to one of ordinary skill in the art to use the fruit filling of Gambino in the bar of Kobs. Applicants respectfully traverse this rejection.

Applicants have discussed the deficiencies of Gambino above and rely upon those arguments here. Yamaguchi and Kobs alone or in combination, fail to cure the deficiencies in Gambino. Yamaguchi teaches how to deamidate proteins and what functions are associated with such proteins. Nothing in Yamaguchi would have suggested to the skilled artisan the properties recited in the rejected claims, particularly in view of the above amendment, which clarifies those properties. Kobs discusses fruit filled bars, but says nothing about the "stand-up" properties recited in the amended claims. As such, the Examiner has failed to set forth a *prima facie* case of obviousness, based upon the cited references alone or in combination. Accordingly, applicants respectfully request the Examiner to reconsider and withdraw the rejections under 35 USC § 103.

#### **IV. Drawings**

The Examiner states that there should be a section entitled "Brief Description of the Drawing" in the specification. In response, applicants have added this heading to the specification in the above amendment.

#### **V. Allowable Subject Matter**

Applicants acknowledge that Claim 12 is allowed.

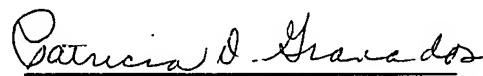
## CONCLUSION

In light of the above amendments and comments, applicants respectfully request that all rejections and objections be withdrawn and that a timely Notice of Allowance should be issued in this application. Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

Date: October 26, 2007

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